IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 260 of 2006()

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AGAINST THE JUDGEMENT/ORDER IN CRLP.35/2006 Dated 23/01/2006
ST.181/2002 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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APPELLANT: COMPLAINANT.

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T.SUBRAMANIAN, S/O.ARUMUGHAN,
PADIKKAL THAZHAM HOUSE, MANNUR AMSOM, DESOM,
KOZHIKODE TALUK, REPRESENTED BY HIS POWER OF
ATTORNEY SRI.ARUMUGHAN.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS: ACCUSED AND STATE.

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1. E.VELAYUDHAN, S/O.IMBICHI NAYADI,
EDATHODI HOUSE, KADALUNDI AMSOM,
PAZHACHANNUR DESOM, KOZHIKODE.

2. THE STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**J.M. JAMES, J.**

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Criminal Appeal No. 260 of 2006

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Dated this the 7th March, 2007.

**J U D G M E N T**

Having dismissed the complaint, S.T.No.181/2002, preferred under Section 138 of the Negotiable Instruments Act, against the first respondent, before the Judicial First Class Magistrate Court-V, Kozhikode, the complainant is before this Court with this appeal, after obtaining leave.

2. The dismissal of the complaint took place on the ground of the complainant being absent, when the case was taken up for evidence, despite direction to that effect. Counsel for the appellant submits that the complainant was represented before the court below by the counsel. Though the counsel sought for an adjournment, as the complainant was absent, on the ground of non-filing of an application, the complaint was dismissed. Counsel, therefore, prayed that an opportunity may be given to the appellant.

3. Though the service is complete in respect of the first respondent, accused, there is no appearance. Hence, I heard the learned counsel appearing for the appellant.

4. In the circumstances, I am of the opinion that an opportunity be given to the parties to raise their respective contentions before the court below, so that the matter could be disposed of, on merit.

5. In the result, the appeal is allowed. The impugned order, dated 5.12.2005, is set aside. S.T.No.181/2002 is restored to the file of the Judicial First Class Magistrate Court-V, Kozhikode.

6. The parties shall appear before the court below on 10.4.2007.

7. As the first respondent, accused, is not before this Court, despite service of notice, the lower court shall take necessary steps to procure his presence, as per the law, and on his appearance/production, the complaint shall be disposed of within four months from the date of appearance of the first respondent, accused.

Criminal Appeal is allowed as above.

**J.M. JAMES,**
**JUDGE**

nj.